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Epic Enters. v. 10 Brown & Howard Wharf Condo. Ass'n, 253 A.3d 383 (R.I. 2021)

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Property Law. *Epic Enters. v. 10 Brown & Howard Wharf Condo. Ass’n*, 253 A.3d 383 (R.I. 2021). In Rhode Island, a receiver may only be appointed on behalf of a creditor or shareholder. Owning a unit in a condominium complex or being tenants-in-common is not considered to be “comparable to the relationship between a debtor and creditor.” Further, legal remedies must be exhausted before attempting to pursue an equitable remedy like a receiver.

FACTS AND TRAVEL

This case was first brought by the petitioners, Epic Enterprises LLC (Epic Enterprises), Kurt Rauschenbach, Kristin Rauschenbach, and Donna Morvillo, in Rhode Island Superior Court to appoint a temporary receiver for respondent, Bard Group, LLC (Bard Group), regarding a dispute arising out of unpaid condominium association fees and unfinished construction.¹ In the Superior Court, the hearing justice added the respondent as a party in the case and found “that petitioners had a right to expect the timely completion of the condominium development by respondent,” and that Bard Group owed the petitioners a fiduciary duty.² The Superior Court held that the petitioners had standing to pursue the receivership and granted a temporary receiver.³ The Rhode Island Supreme Court found that the petitioners did not have standing to request a receiver for Bard Group and vacated the order of the Superior Court.⁴

At the time the case was filed, Bard Group owned nine of the thirteen condominiums at 10 Brown & Howard Wharf Condominium in Newport, Rhode Island.⁵ As a result of owning the majority

1. *Epic Enters. v. 10 Brown & Howard Wharf Condo. Ass’n*, 253 A.3d 383, 384, 386 (R.I. 2021).

2. *Id.* at 386.

3. *Id.*

4. *Id.* at 389.

5. *Id.* at 385 (citing *Epic Enters. v. Bard Group*, 186 A.3d 587, 588 (R.I. 2018)).

of the units, Bard Group, had a controlling vote share in the 10 Brown & Howard Wharf Condominium Association.⁶ The condominium building's roof began to leak in April 2019 and repairs, which affected common elements of the complex, were not made in a timely manner.⁷ Bard Group claimed the delay resulted from the special master,⁸ while Epic Enterprises claimed the delay resulted from "either willful or negligent [conduct] on the part of the association."⁹ On May 28, 2019, petitioners filed a petition to appoint a receiver for the association.¹⁰ In response, the hearing justice appointed a special master.¹¹

In late 2019, Bard Group, began paying condominium fees late and eventually stopped making payments.¹² By May 2020, Bard Group owed the association "over \$59,000 in fees," in addition to falling behind on mortgage payments to its mortgagee, which resulted in foreclosure, scheduled for June 25, 2022.¹³ Petitioners filed a second motion to appoint a receiver but this time for Bard Group, rather than the association.¹⁴ In addition to claims for unpaid condominiums fees, petitioners claimed that: Bard Group did not finish the construction of the units; failed to perform adequate maintenance; and "asserted that respondent [the Bard Group] owed them a fiduciary duty as the declarant who sold them their units, that they were tenants-in-common with the respondent, and that the duty respondent owed them was comparable to the relationship between a debtor and creditor."¹⁵ By contrast, Bard Group argued that negotiations regarding finances were ongoing, and that the petitioners lacked legal standing to request a receiver "because petitioners were neither creditors nor shareholders of respondent," and that, before pursuing an equitable remedy, like this receivership,

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. *Id.*

14. *Id.* at 386.

15. *Id.*

the petitioners needed to exhaust the other legal remedies available to them first.¹⁶

ANALYSIS AND HOLDING

The Rhode Island Supreme Court reviewed this case *de novo* because there was a question of law and statutory interpretation.¹⁷ The Court acknowledged that the Superior Court is empowered to appoint receivers by statute and pursuant to its equitable jurisdiction; however, the Court went on to emphasize that the trial justice's authority to do so is not unlimited and can be overturned if there is an abuse of discretion.¹⁸

The Supreme Court overturned the lower court's ruling and held that the petitioners did not have standing to file a motion for receivership.¹⁹ The Court relied on precedent "that standing to pursue a receivership is available only for shareholders of a corporation and its creditors."²⁰ Here, the petitioners are not shareholders or creditors of Bard Group.²¹ The Court found that merely purchasing a condominium from another party does not fall within the typical usage of the word "creditor."²² The Court limited its interpretation of the term to the more typical use of the word, defined in Black's Law Dictionary as "[o]ne to whom a debt is owed; one who gives credit for money or goods."²³ The Petitioners attempted to broaden this definition by introducing caselaw from lower court rulings and other jurisdictions, which the Rhode Island Supreme Court declined to consider in this case and rejected attempts to expand the

16. *Id.*

17. *Id.* at 387.

18. *Id.*

19. *Id.* at 389.

20. *Id.* at 388 (citing *Peck v. Jonathan Michael Builders, Inc.*, 940 A.2d 640, 641–42, 645 (R.I. 2008)).

21. *Id.* (citing BLACK'S LAW DICTIONARY 484 (11th ed. 2019) (defining a "creditor" first as "[o]ne to whom a debt is owed; one who gives credit for money or goods")).

22. *Id.*

23. *Id.* (citing BLACK'S LAW DICTIONARY, *supra* note 21, at 464 (defining a "creditor" first as "[o]ne to whom a debt is owed; one who gives credit for money or goods")).

definition include anyone “to whom any obligation is owed, whether contractual or otherwise.”²⁴

The Supreme Court noted that the Superior Court did not find that the petitioners were creditors to Bard Group.²⁵ Rather, the hearing justice appointed a temporary receiver “to protect . . . [t]he interest of these condo owners [who are] affected by the actions of The Bard Group,” and concluded that the petitioners had standing because they had the “right to have this condominium completed by the [Bard Group],”²⁶ and therefore, there was not a fiduciary duty in place.²⁷ While the Court acknowledged that there is a reasonable argument that Bard Group did owe the petitioners a statutory fiduciary duty, this matter should have been adjudicated “under the Rhode Island Condominium Act.”²⁸

In conclusion, the Supreme Court held that the petitioners were not “creditors,” consistent with the typical usage of the term.²⁹ The Court declined to expand the definition to include anyone “to whom any obligation is owed” in the context of granting a receiver.³⁰ The Court ruled in favor of Bard Group in this case, holding that the petitioners did not have standing to file a petition to appoint a receiver because they were not creditors.³¹

COMMENTARY

The Rhode Island Supreme court relied on a narrower definition of a “creditor” for the purpose of deciding whether to appoint a receiver in this case.³² By doing so, the Court limits its ability to provide an equitable remedy to the injured party. The Court creates the restriction by providing that the petitioners should first

24. *Id.* (citing BLACK’S LAW DICTIONARY, *supra* note 21, at 464 (listing a second definition of a “creditor” under Roman law as “[o]ne to whom any obligation is owed, whether contractual or otherwise”).

25. *Id.* at 389.

26. *Id.*

27. *Id.*

28. *Id.* (citing R.I. GEN. LAWS §§ 34-36.1-1.12, 34-36.1-3.03 (1982); and *Kocon v. Cordeiro*, 200 A.2d 708, 710 (R.I. 1964) (denying equitable relief to complainants where “[f]ull justice is available to them in a court of law and their remedy at law is, therefore, complete, and adequate”).

29. *Id.* at 388.

30. *Id.*

31. *Id.* at 388–89.

32. *Id.* at 388.

pursue claims for a legal remedy under the Rhode Island Condominium Act.³³ This approach protects the traditional notion that courts should provide equitable remedies only after attempts to provide a legal remedy have been exhausted and are not adequate.³⁴ In addition to solidifying the high bar required to appoint a receiver, the court also clarifies that the relationship between a condominium purchaser and the seller does not amount to a relationship similar enough to a debtor and creditor to give rise to a court-appointed receiver.³⁵

While the Court denied a receiver in this case between condominium owners and members with a controlling vote in the association, the trial justice still retains the power to appoint a receiver in other situations that fall within the scope of the law. A receiver can be a powerful tool to compel a party to redevelop a distressed property.³⁶ Cases in which a receiver is an appropriate remedy can range from situations raising environmental concerns, like appointing a receiver to oversee remediation of contaminated “brownfield” sites, to cases where a receiver may oversee a business for a short period of time to help preserve or increase its value before a sale.³⁷ For example, an abandoned jewelry-plating company in Providence was redeveloped into a new economic hub for the city through various partnerships that came about with the oversight of a receiver.³⁸ Appointing a receiver in such cases helps the Court “preserve the value of distressed assets for the benefit of creditors and stakeholders.”³⁹

While the Court emphasizes clear restrictions on when a receiver may be appointed as a remedy, it still leaves room for a receiver in cases in which an equitable remedy is appropriate and economically advantageous to the parties.

33. *Id.* at 389.

34. Samuel L. Bray, *The System of Equitable Remedies*, 63 UCLA L. REV. 530, 545 (2016).

35. *Epic Enters.*, 253 A.3d at 386.

36. W. Mark Russo, *Creative Receivership and Redevelopment: A Commentary*, 60 R.I. Bar J. 31 (2012).

37. Allan M. Shine, *Receiverships Survive Pre-Emption Attack*, 47 R.I. Bar J. 11 (1999).

38. Russo, *supra* note 37, at 31.

39. *Id.*

CONCLUSION

The Rhode Island Supreme Court held that a receiver may only be appointed on behalf of a creditor or shareholder and that equitable remedies may only be awarded after legal remedies have been pursued first.⁴⁰ Additionally, the Court held that buying a condominium unit does not establish a relationship comparable to a debtor and a creditor.⁴¹

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40. *Epic Enters.*, 253 A.3d at 389.

41. *Id.* at 388.